

IN THE HIGH COURT OF SINDH, KARACHI
Spl .Sales Tax Appeals No.94, 95 & 96 of 2004

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

*BEFORE: Irfan Saadat Khan,
Zulfiqar Ahmed Khan, JJ*

The Collector of Customs,
Port Muhammad Bin Qasim,
Appellant.

: through M/s. Imran Ali Mithani,
Pervez Ahmed Memon and Amir
Raza, Advocates.

Vs.

Pakistan State Oil Co., (PSO)
PSO House,
Khayaban-e-Iqbal, Clifton,
Karachi.

Respondent No.1 : None present.

Respondent No.2 : Performa Respondent.

Date of hearing : 29.09.2022

Date of decision : 29.09.2022

JUDGEMENT

Irfan Saadat Khan, J. Through these Sales Tax Appeals (STAs) certain questions of law were raised, however vide order dated 25.11.2005 only following question of law was admitted for regular hearing.

“Whether in the facts and circumstances of this case the Tribunal was justified in applying the ratio in the case of Ahmed Investment ..Vs.. Federation of Pakistan, 1994 PTD 575, even after insertion of sub section (1-A) in Section 6 of the Sales Tax Act, 1990 with retrospective effect.”

2. Briefly stated the facts of the case are that the Respondent imported furnace oil vide IGM No.380/1999 dated 12.8.1999 and furnished Bill of Entry (hereinafter referred to as B/E) on 16.8.1999 by claiming exemption on the said furnace oil, as up till

15.8.1999 there was exemption on the import of furnace oil. However vide SRO No.922(I)/99 dated 16.8.1999 exemption of sales tax on furnace oil was withdrawn. The Department then vide Order-in-Original No.10/1999 dated 27.12.1999 observed that since the exemption of sales tax on furnace oil imported by the Petitioner was no more available after the promulgation of the above SRO, applied sales tax on it.

3. Being aggrieved with the said order an appeal thereafter was preferred before the Tribunal, who allowed the appeal by observing that above referred SRO was not applicable on the ground that since the goods were delivered to the appellant on 15.8.1999, whereas the SRO would be applicable from 16.8.1999. It is against this order the present STAs were filed and the above question of law was admitted for regular hearing.

4. M/s. Imran Ali Mithani, Pervez Ahmed Memon, Amir Raza, Advocates a/w Mr. Tariq Aziz, Principal Appraiser Law, Port Qasim Authority, Karachi were present and stated that the learned Tribunal was not justified in granting exemption on the sales tax to the Respondent as the date on which the B/E was furnished by the Respondent the exemption on sales tax was already withdrawn by the Federal Board of Revenue (FBR). They invited our attention to Section 30 of the Customs Act, 1969 (hereinafter referred to as the Act) that the date of determination of the value is always the date of presentation of B/E. They stated that admittedly when the B/E was furnished on 16.8.1999, on which date the above referred SRO was very much applicable, hence there was no justification available with the Tribunal to assume that the date of exemption of the sales tax was to be reckoned from the date of delivery and that

any vested right has been created in favour of the Respondent in this behalf. They submitted that the Tribunal incorrectly relied upon the decision given in the case of *Ahmed Investment ..Vs.. Federation of Pakistan (1994 PTD 575)*. They finally stated that the answer to the question raised in all the three STAs may be given in negative i.e., in favour of the Department and against the Respondent.

5. Nobody has appeared on behalf of the Respondent No.1.

6. We have heard both the learned counsel at length and have perused the record, the law and the decision referred above.

7. Perusal of the record reveals that the B/E was presented by the Respondent No.1 on 16.8.1999 to the Custom Authorities when the above referred SRO was already issued and promulgated and thus in our view would have its effect. Perusal of Section 30 of the Act clearly reveals that the date of determination of value is always considered to be the date on which "Bill of Entry is presented". In the present case when, it is an admitted position that B/E was presented on 16.8.1999, the observation that goods were delivered to the Respondent on 15.8.1999 and thus a vested right is created on the said date hardly carries any weight. We disagree with the contention raised by the learned Tribunal that any vested right is created in favour of the Respondent with regard to date of delivery of the goods. Had B/E presented on 15.8.1999 i.e. prior to the date of issuance of the SRO then it could have been said that a vested right has been created in favour of the Respondent but in the instant matter, it is evident from the record that the B/E was presented on 16.8.1999 when the SRO was in

vogue, hence the assertion of the Tribunal that the goods were delivered to the Respondent on 15.8.1999 hardly carries any substance and weight in view of the admitted position that the B/E was presented by the respondent on 16.8.1999 when, as already observed, the SRO had come in the field. Hence, we are of the view that the observation of the Tribunal with regard to non-applicability of the SRO and that of creation of any vested right is not based on proper appreciation of the law and the facts obtaining in the instant matter and reliance on the decision in the case of *Ahmed Investment (Supra)* by the Tribunal is also found to be misplaced.

8. We therefore, under the circumstances, allow all the three STAs filed by the Department by answering the question in negative i.e., in favour of the Appellant/Department and against the Respondent. These Spl. STAs were disposed of vide our short order dated **29.09.2022** and these are the reasons for the same.

9. Let a copy of the order be sent to the concerned Registrar for doing the needful in accordance with law.

JUDGE

JUDGE

SM